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## BEFORE THE ARIZONA CORPORATION COMMISSION

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2002 MAY 30 P 3:15

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WILLIAM A. MUNDELL  
CHAIRMAN  
JIM IRVIN  
COMMISSIONER  
MARC SPITZER  
COMMISSIONER

DOCKET NO. E-01032C-00-0751

IN THE MATTER OF THE APPLICATION OF  
THE ARIZONA ELECTRIC DIVISION OF  
CITIZENS COMMUNICATIONS COMPANY TO  
CHANGE THE CURRENT PURCHASED POWER  
AND FUEL ADJUSTMENT CLAUSE RATE, TO  
ESTABLISH A NEW PURCHASED POWER AND  
FUEL ADJUSTMENT CLAUSE BANK, AND TO  
REQUEST APPROVED GUIDELINES FOR THE  
RECOVERY OF COSTS INCURRED IN  
CONNECTION WITH ENERGY RISK  
MANAGEMENT INITIATIVES.

**ERRATA TO STAFF'S RESPONSE  
TO BROWN & BAIN'S REPLY IN  
SUPPORT OF THE NOTICE OF  
APPEARANCE OF SUBSTITUTE  
COUNSEL**

At page 2, lines 6-8, references to "Brown & Bain" should read "Gallagher & Kennedy."

RESPECTFULLY SUBMITTED this 30<sup>th</sup> day of May, 2002.

*Christopher C. Kempley*

Christopher C. Kempley, Chief Counsel  
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Phoenix, Arizona 85007  
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The original and ten copies of the  
foregoing filed this 30<sup>th</sup> day of  
May, 2002, with:

Docket Control  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

Arizona Corporation Commission

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MAY 30 2002

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*mc*

1 COPIES of the foregoing were mailed/  
2 this 30th day of May, 2002 to:

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Arizona Corporation Commission  
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2002 MAY 29 P 3:36

Company/Case Name Arizona Electric Division of Citizens Communications Company  
Doing Business As (d/b/a) \_\_\_\_\_  
Docket Number (s) E-01032C-00-0751

AZ CORP COMMISSION  
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Description of Document or Nature of Action  
Please choose the item that best describes the nature of the case/filing.

**UTILITIES - NEW APPLICATION**

☐ New CC&N  
☐ Rates  
☐ Interim Rates  
☐ Cancellation of CC&N  
☐ Deletion of CC&N  
☐ Extension of CC&N  
☐ Tariff (NEW)  
☐ Request for Arbitration  
☐ Full or Partially Arbitrated  
☐ Interconnection Agreement  
☐ Voluntary Interconnection Agreement  
☐ Miscellaneous - Specify: \_\_\_\_\_

☐ Main Extension  
☐ Contract/Agreements  
☐ Formal Complaint  
☐ Waiver/Rule Variance  
☐ Line Sitting Committee Case  
☐ Small Water Company - Surcharge  
☐ Sale of Assets & Transfer of Ownership  
☐ Sale of Assets & Cancellation of CC&N  
☐ Fuel Adjuster/PGA  
☐ Merger  
☐ Financing

**UTILITIES - REVISIONS/AMENDMENTS TO PENDING OR APPROVED MATTERS**

☐ Application:  
Company \_\_\_\_\_  
Docket Number \_\_\_\_\_

☐ Tariff: (Promotional or Compliance)  
(Circle One)  
☐ Decision No.  
☐ Docket No:

**SECURITIES or MISCELLANEOUS FILINGS**

☐ Affidavit (Publication, Public Notice)  
☐ Comments  
☐ Exceptions  
☐ Exhibit(s)  
☐ Notice of Appearance/Intent  
☐ Notice of Errata  
☐ Opposition  
☐ Petition

Other: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

☐ Request/Motion for Extension of Time  
☐ Request/Motion for a Hearing  
☐ Request/Motion for an Intervention  
☐ Miscellaneous Request/Motion  
☐ Request/Motion for a Re-hearing  
☐ Request/Motion to Continue Hearing  
☐ Request/Motion to Strike  
☒ Response  
☐ Testimony  
☐ Waiver  
☐ Witness List

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*[Signature]*

MAY 29 2002

5/29/02  
Date

Daniel W. Pozefsky

Please print the name of the person whose signature appears  
on the filing (i.e. Contact Person, Respondent, Attorney,  
Applicant, etc.)

## BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A. MUNDELL  
CHAIRMAN  
JIM IRVIN  
COMMISSIONER  
MARC SPITZER  
COMMISSIONER

2002 MAY 29 P 3:36

AZ CORP COMMISSION  
DOCUMENT CONTROL

IN THE MATTER OF THE APPLICATION  
OF THE ARIZONA ELECTRIC DIVISION  
OF CITIZENS COMMUNICATIONS  
COMPANY TO CHANGE THE CURRENT  
PURCHASED POWER AND FUEL  
ADJUSTMENT CLAUSE RATE, TO  
ESTABLISH A NEW PURCHASED  
POWER AND FUEL ADJUSTMENT  
CLAUSE BANK, AND TO REQUEST  
APPROVED GUIDELINES FOR THE  
RECOVERY OF COSTS INCURRED IN  
CONNECTION WITH ENERGY RISK  
MANAGEMENT INITIATIVES.

Docket No. E-01032C-00-0751

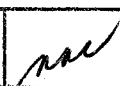
**RUCO'S RESPONSE TO CITIZENS'  
REPLY**

Arizona Corporation Commission

**DOCKETED**

MAY 29 2002

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Pursuant to the Procedural Order of May 24, 2002, the Residential Utility Consumer Office ("RUCO") submits its response to Citizens' Communication Company's ("Citizens") Reply in Support of Its Notice of Appearance of Substitute Counsel ("Reply").

RUCO is unable to take a position at this time on whether Mr. Mais should be disqualified, given the representations in counsel's reply to the motions by the Counties and Staff. In his Rebuttal testimony, Paul M. Flynn states that local counsel (presumably Mr. Mais of Brown & Bain) "reinforced" Wright & Talisman's conclusion that a preliminary injunction precluding APS' interpretation of the contract would be very difficult to obtain since Citizens' claim was a contract action for which money damages were available. Flynn Rebuttal at 10. On the other hand, the Mais memorandum of April 26, 2001, suggests that Citizens might overcome these obstacles by, among other things, arguing the substantial impact of the

1 dispute on ratepayers. This presents a discrepancy between Mr. Flynn, who opined that the  
2 dispute is a straight contract issue, and Mr. Mais, who listed other considerations that Citizens'  
3 should explore in deciding whether to pursue civil litigation.


4 Citizens' Reply amplifies the discrepancy. The Reply states that Citizens engaged  
5 Brown & Bain merely for procedural purposes, leaving the implication that communications  
6 between Citizens and the law firm did not involve substantive matters that might bear on the  
7 prudence of Citizens' actions on behalf of ratepayers. Yet a fair reading of the Mais  
8 memorandum of April 26, 2001, suggests that there were other considerations that the local  
9 federal or state court could consider to expedite any relief due to Citizens.

10 RUCO recommends that the Commission investigate and explore whether the  
11 Company's communications to Mr. Mais prior to the April 26, 2002 memo contradict the  
12 testimony filed by Mr. Flynn before deciding the disqualification issue. A preliminary hearing  
13 should be scheduled at which Mr. Mais should be required to testify. Since much of this  
14 information has been and continues to be developing, the Commission should not preclude the  
15 possibility that a party call Mr. Mais as a witness at the ultimate hearing merely because he  
16 was not listed pursuant to the initial procedural order in this matter.

17 RUCO requests that the Commission delay ruling on the Counties' objections to the  
18 substitution of counsel and that a preliminary hearing be scheduled for the purpose of taking  
19 the testimony of Mr. Mais.

20 RESPECTFULLY SUBMITTED this 29th day of May, 2002.

21  
22  
23  
24

  
Daniel W. Pozefsky  
Staff Attorney

1 AN ORIGINAL AND TEN COPIES  
2 of the foregoing filed this 29th day  
3 of May, 2002 with:

3 Docket Control  
4 Arizona Corporation Commission  
5 1200 West Washington  
6 Phoenix, Arizona 85007

6 COPIES of the foregoing hand delivered/  
7 mailed this 29-30th day of May, 2002 to:

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